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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTRON PHILLIPS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0708-CR-697
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Curtis Foulks, Judge Pro Tempore  
Cause No. 49G23-0701-FD-5084

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**March 7, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Antron Phillips appeals his conviction for class B felony possession of cocaine. We affirm.

## **Issue**

Phillips questions whether the trial court committed fundamental error by admitting evidence seized by police during a search incident to arrest.

## **Facts and Procedural History**

On January 11, 2007, Officer Brian Hancock of the Indianapolis Metropolitan Police Department received a dispatch that two African-American men were suspiciously circling the perimeter of a home in Woodruff Place, an area in which there had been several recent burglaries. When Officer Hancock responded to the call, a man approached him and identified himself as the source of the information contained in the dispatch. He told Officer Hancock that the two men had walked southbound on Middle Drive toward Michigan Avenue. Officer Hancock soon located two African-American men in the 500 block of Middle Drive. He asked them to identify themselves and to state their activities. Phillips provided several false names and dates of birth before truthfully identifying himself to the officer. Officer Hancock discovered that Phillips had an active warrant for his arrest. He arrested Phillips, searched him, and found a baggie of crack cocaine in Phillips's left front jacket pocket and what appeared to be a crack pipe in his right front jacket pocket. At the time he was arrested, Phillips was 671 feet from Arsenal Technical High School.

On January 25, 2007, the State charged Phillips with class B felony cocaine possession. On March 8, 2007, Phillips filed a motion to suppress, alleging that Officer Hancock had arrested him pursuant to an invalid warrant. On April 2, 2007, at the hearing on his motion to suppress, Phillips testified that in 2001, the State of Indiana filed charges against him in two criminal matters. In 2004, Phillips was incarcerated in Oregon for an attempted robbery conviction. He claimed that in 2004, pursuant to the Interstate Agreement on Detainers (“IAD”), he sent written notice to Oregon prison officials of his desire to dispose of the pending Indiana charges. He said that he also sent a similar notice to the Office of the Marion County Prosecutor. Article III of the IAD, codified at Indiana Code Section 35-33-10-4, states in relevant part:

- (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer<sup>[1]</sup> has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint.... The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.
- (b) The written notice and request for final disposition referred to in

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<sup>1</sup> The parties dispute whether the State of Indiana had in fact filed a detainer against Phillips related to his 2001 charges. For purposes of this opinion only, we will presume that there was a detainer which satisfied the terms of the IAD. We note, however, that if a detainer has not been lodged against a defendant, then the IAD is not triggered. *Robinson v. State*, 863 N.E.2d 894, 897 (Ind. Ct. App. 2007), *trans. denied*.

paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

At the suppression hearing, Phillips failed to present any documentation of his alleged compliance with these IAD requirements. He also admitted that he had previously been convicted of providing false information to a police officer. The trial court denied Phillips's motion to suppress.

Phillips waived his right to a jury trial, and the trial court held a bench trial on July 5, 2007. Officer Hancock testified that during his search incident to arrest, he recovered from Phillips's jacket a baggie of "an off-white rock-like substance ... [that] appeared to be [c]rack [c]ocaine" and "what I believe through my training and experience to be a [c]rack pipe." Tr. at 32-33. Phillips did not object to this testimony. Nor did he object when the baggie and pipe were admitted into evidence. The trial court found Phillips guilty of class B felony cocaine possession. Phillips now appeals.

### **Discussion and Decision**

Phillips claims that the trial court committed fundamental error by admitting the

evidence seized by police upon his arrest.<sup>2</sup> The fundamental error exception is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). Furthermore, in order to qualify as a fundamental error, an error must be “so prejudicial to the rights of [the defendant as to make a fair trial impossible.” *Willey v. State*, 712 N.E.2d 434, 444-45 (Ind. 1999).

Phillips contends that his arrest on January 11, 2007, was unlawful because the Indiana warrants which prompted Officer Hancock to arrest him should have been previously dismissed pursuant to the IAD. Phillips failed to prove, however, that he complied with the statutory requirements. In his brief, Phillips himself concedes:

The trial court’s denial of the motion to suppress was based on Phillips’ failure to comply with the statute. Appellant acknowledges this Court held in

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<sup>2</sup> Phillips concedes that he failed to properly preserve his claim of error by failing to file an interlocutory appeal when the trial court denied his motion to suppress and by failing to object when the State offered this evidence at trial. *See Poulton v. State*, 666 N.E.2d 390, 393 (Ind. 1996) (“[A] trial court’s denial of a motion to suppress does not preserve error. The proper method of preserving error for appellate review is an objection to the admission of the allegedly illegally obtained evidence at the time it is offered into evidence during trial.”) (citation omitted). Accordingly, he bases his appeal on the fundamental error exception.

Also, we note that Phillips alleges error only in the trial court’s admission of the items recovered during the search and not in the admission of Officer Hancock’s testimony describing his discovery of these items on Phillips’s person. Therefore, even if the trial court erred in admitting the cocaine and pipe, such error would likely be deemed cumulative and thus harmless. “An error in the admission of evidence is not prejudicial if the evidence is merely cumulative of other evidence in the record.” *Pavey v. State*, 764 N.E.2d 692, 703 (Ind. Ct. App. 2002). We need not address that issue, however, as we resolve the case on other grounds below.

*State v. Greenwood*, 649 N.E.2d 641, 643 (Ind. Ct. App. 1995),<sup>[3]</sup> that it is essential for the prisoner to comply with the procedural requirements of the IAD. There is no evidence Phillips gave the required forms to Oregon prison authorities. Nor did Phillips send his request for disposition through Oregon officials or by registered or certified mail.

Appellant's Br. at 7 (some citations omitted).

Phillips compares these facts to those in the case of *State v. Ward*, 435 N.E.2d 578 (Ind. Ct. App. 1982). In that case, Ward, while incarcerated in Illinois, sent a letter to the prosecutor in Lake County, Indiana, requesting that pending charges against him be speedily dealt with pursuant to the IAD. Ward also provided a copy of this letter to his case manager at the Illinois prison, and the letter was placed in his prison file. This evidence was uncontroverted by the State.

We find the instant case distinguishable from *Ward*. Here, Phillips failed to provide evidence, other than his own testimony, that he notified the proper Oregon custodial official of his IAD request. The record contains a copy of his July 1, 2004, letter to "Marion County Courts," but there is no evidence that it was ever received because it was sent via regular mail. See Appellant's App. at 34-37. It is well-established that the function of the trier of fact is to determine the weight of the evidence and the credibility of the witnesses. *McClendon v. State*, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996). "The trier of fact has the right to accept any witness' testimony or to disbelieve the testimony of any witness." *Reid v.*

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<sup>3</sup> Phillips fails to note that this opinion was vacated by *State v. Greenwood*, 665 N.E.2d 579 (Ind. 1996). In its opinion, however, our supreme court agreed that the IAD procedures, including the requirement that notice of request for disposition be delivered to custodial officials so that they can forward the notice along with appropriate certifications to prosecuting authorities, are not "mere technicalities and we have long required strict compliance." *Id.* at 581-82 (citing *State v. Ward*, 435 N.E.2d 578, 580 (Ind. Ct. App. 1982)).

*State*, 259 Ind. 166, 168, 285 N.E.2d 279, 281 (1972). In light of the evidence of Phillips’s past dishonesty with law enforcement,<sup>4</sup> it is likely—and in our view, quite reasonable—that the trial court assigned little or no weight to Phillips’s testimony, which was the only evidence offered to show that he had complied with the IAD by sending written notice to prison officials.

Based on the above, we cannot conclude that the trial court committed error, fundamental or otherwise, by admitting the evidence seized incident to Phillips’s arrest. We hereby affirm his conviction.

Affirmed.

BAILEY, J., and NAJAM, J., concur.

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<sup>4</sup> At the hearing on his motion to suppress, Phillips testified that he had been convicted in 2005 of providing false information to a police officer. In the charging information filed with the trial court on January 11, 2007, Officer Hancock wrote, “After asking Mr. Phillips several times and him giving me several different names and dates of birth, Mr. Philips finally told me that his real name was Antron Phillips.”